

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4480 OF 2007

Mrs.Mariyambi Shaikh Hussain & Ors. : Petitioners
V/s.

Mrs.Zulekhabi Fakir Mohammed & Ors. : Respondents

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Mr.P.S.Dani for the petitioners.

Mr.B.Unnikrishnan for the respondents.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 24, 2007.

P.C.

1. Rule, returnable forthwith.

Mr.Unnikrishnan waives service for the respondents.

Heard by consent.

2. The impugned order disallowing permission to the petitioners to lead evidence and directing them to prove the fraud by way of affidavit under Order XIX is hereby set aside primarily on the ground that the finding has not been recorded in terms of the proviso to Order XIX. Instead of remitting the matter back merely for considering the matter afresh under Order XIX, I consider it appropriate, in the interest of justice, to direct that

the parties may lead evidence, in accordance with Order XVIII of the C.P.C. No reason in fact or in law has been demonstrated by the respondents why such a course would not be appropriate in the circumstances of the case.

3. Hearing of Misc. Notice No.157/2007 in R.A.E. Suit no.241/601 of 2005 is hereby expedited. The trial Court shall dispose of that application and connected applications not later than two months after the date on which the parties appear before it. The parties are directed to appear before the trial Court on 3.9.2007. The rule is made absolute in the above terms.

S.A. BOBDE, J.